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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.G., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

R.G.,

Defendant and Appellant.

B203515

(Los Angeles County
Super. Ct. No. PJ40208)

APPEAL from an order of wardship of the Superior Court of Los Angeles County,
Fred J. Fujioka, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Attorney General, Michael C. Keller and Nima
Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

R.G., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered following a determination that he committed the offense of criminal threats (Pen. Code, § 422). The court ordered him placed home on probation. We affirm the order of wardship.

FACTUAL SUMMARY

1. People's Evidence.

Viewed in accordance with the usual rules on appeal (*In re Dennis B.* (1976) 18 Cal.3d 687, 697), the evidence established that on February 12, 2007, M.M., appellant's mother (mother), lived in Los Angeles County. S.M., appellant's stepfather (stepfather), was mother's husband.

a. Mother's Testimony.

Mother testified as follows. About 6:00 p.m. on the above date, stepfather called mother on the phone and, inter alia, asked about the children. During that time, appellant told mother to shut up. Mother told appellant that he could not talk to her like that. Stepfather, still on the phone, asked mother what appellant had just told her, and mother said appellant had told her to shut up. Appellant began to get angry.

Stepfather asked mother to give the phone to appellant because he had disrespected mother, and stepfather wanted to talk to him. Mother complied. Appellant listened to stepfather and at some point said okay. Appellant and stepfather did not argue.

After appellant and stepfather spoke, stepfather told mother that he had spoken to appellant. At that point, appellant seemed very upset, and he walked to the garage. Mother waited because she wanted appellant to calm down. Appellant returned, entered the kitchen, and retrieved a knife. The knife looked like a steak knife, and its blade was probably five inches long.

Appellant held the knife and said he wanted mother to call stepfather. Appellant said he wanted to hurt stepfather. The prosecutor asked mother whether appellant used the word "hurt" or "kill," and mother testified she thought appellant said "kill."

Mother spoke to appellant to try to calm him. She did not then call stepfather but called the police using 911. An officer arrived and mother told the officer about the incident with the knife and about appellant threatening to kill stepfather. After police arrived, mother called stepfather and told him to call 911 because appellant needed help. The prosecutor asked mother if she told stepfather that appellant had threatened to kill stepfather. Mother replied, "I told [stepfather] that he -- yes, that [appellant] was highly upset, that he wanted to hurt him."

Appellant did not say anything to mother about hurting her or her children. Mother called the police because appellant said he was going to hurt himself. The prosecutor asked whether mother also called the police because appellant said he was going to hurt stepfather, and mother replied yes. Mother was very afraid.

During cross-examination, mother testified her greater fear was that appellant was going to hurt himself. Appellant had said that he wanted to hurt himself, and appellant told mother that if she did not call 911, he would hurt himself. In mother's opinion, stepfather was not at the time subject to an immediate threat of harm. Stepfather had been at his job, which was about two miles from mother's home. Appellant never threatened stepfather directly on the phone. Mother testified that the police took appellant into custody almost immediately after they arrived. Mother testified that stepfather's knowledge of what had taken place was based on what mother had told him, and "telling [stepfather] at a time when [appellant] was already taken into custody[.]"

During redirect examination, mother testified she remembered speaking with Los Angeles Police Officer George Olsey. The prosecutor asked if mother told Olsey that appellant had said that mother should call the police because appellant was going to hurt someone. Mother denied ever using the word "somebody."

b. Stepfather's Testimony.

Stepfather testified as follows. About 4:25 p.m. on February 12, 2007, stepfather was at work when mother called him. Stepfather heard mother arguing with appellant. Stepfather asked to speak with appellant, and told appellant to respect mother.

Mother called stepfather later. She was crying and asked him to come home. Mother said appellant was a little out of control, and was saying he wanted to kill himself and stepfather. Stepfather came home at mother's request because appellant was out of control. When appellant was being disrespectful, stepfather would always try to correct him, and most times he came home, spoke to appellant, and calmed him.

Stepfather felt nothing when mother told him that appellant wanted to kill him. Stepfather thought appellant just said that because appellant was angry. Stepfather did not recall if mother told him that appellant had a knife. Stepfather was not afraid.

When stepfather came home, he was not afraid for his family. When he saw the police, he was surprised because mother had not told him that she had called the police. He saw police putting appellant in a patrol car. An officer told stepfather that appellant, in the presence of the officers, had threatened that he wanted to kill stepfather. The officers decided they could not leave appellant at the home. Stepfather did not recall telling an officer that he was afraid, and did not tell officers that he thought that appellant could carry out his threats. Stepfather asked permission to speak with appellant and the officers granted stepfather's request. Stepfather did not tell Olsey that he felt threatened by appellant.

During cross-examination, stepfather testified that appellant never threatened him directly. He felt confident he could calm appellant. Stepfather testified that when mother called him, she said that appellant was holding a knife to his neck and was saying he was going to kill himself. During redirect examination, stepfather testified that he heard appellant was in the house, was very upset, and had a knife, but stepfather was not afraid for his family. Stepfather's four-year-old daughter and eight-year-old stepson were in the house.

c. Officer Olsey's testimony.

Olsey testified that about 6:00 p.m. on February 12, 2007, he went to mother's residence because of a call about a possible assault with a deadly weapon at the location. When he arrived, he saw appellant standing in the driveway. Appellant's hands were in his pockets, and there was a large knife protruding from them. Olsey, displaying a Taser,

told appellant to drop the knife on the ground, appellant complied, and Olsey took him into custody without incident.

Olsey then spoke with mother. She told Olsey that she had called the police because her husband had been threatened and appellant said he was going to kill “somebody.” Mother appeared to be very upset, and was probably just short of being hysterical. She was teary-eyed, shaking a little, and afraid. Mother never told Olsey anything about appellant wanting to harm himself or about appellant saying he wanted to kill himself.

Olsey spoke with stepfather, who was somewhat confused. Olsey explained why police were there. Olsey testified stepfather “knew of the conversation” because mother had called him and advised him that the police were there, so stepfather came home. Stepfather was clearly upset, and wanted to talk with appellant. Police allowed him to do so.

Olsey spoke with stepfather about “the threat that was made towards him” and Olsey asked if he took that threat seriously. Olsey explained to stepfather that when the officers approached the driveway, appellant had a knife in his pocket. Olsey testified he explained to stepfather the elements of the crime, he understood or seemed to understand, “and I asked him if he was fearful if he thought -- ‘does the defendant have the ability, do you think, with a knife in his pocket to harm you or your family.’ ” Stepfather replied yes. That was a reason Olsey arrested appellant.

About 10 to 15 minutes after the incident, Olsey spoke with appellant at the police station. Appellant waived his *Miranda* rights and gave a written statement. The statement said, “My mom was talking on the phone, and I was getting something in the kitchen, and my brother said I could not get it, and my mom told me that I can’t have it anymore, and I told her to shut up, and my stepdad heard, and she told him, and he told me stuff that made me angry. I told my mom to call him so I could kill him, and I told her he shouldn’t be saying shit, and I told her to call the cop or someone is going to die,

not me, you, [minor No. 2], or [minor No. 3][.]”¹ According to Olsey, minor No. 2 and minor No. 3 were appellant’s siblings.

During cross-examination, Olsey testified appellant was rather calm when Olsey took him into custody. Olsey thought he previously had testified that when stepfather arrived, he seemed a little rattled but not fearful.

During redirect examination, Olsey testified that he talked with stepfather about the elements of the crime. The following then occurred: “Q . . . And when you were talking about the elements of the crime, you explained to him one of the things, he had to be in fear for his safety or for the safety of his family; is that correct? [Sic.] [¶] A Correct. [¶] Q Did he indicate that he was? [¶] A Yes.”

2. Defense Evidence.

In defense, stepfather testified as follows. When mother called him the second time, she mentioned that appellant was holding a knife. Mother did not indicate to stepfather that she was afraid of appellant, or that she felt threatened by him. Mother indicated she was concerned that appellant might harm himself and that he was holding the knife to his neck. That was the main reason stepfather came home. Appellant had never held a knife to his neck before. Stepfather feared appellant might harm himself. When he arrived at the house, mother was pretty calm, but he could tell that she had been crying and was worried. Police should not have been called to the scene, stepfather asked mother why she had called the police, and police should not have taken appellant away.

Appellant testified as follows. Appellant remembered the February 12, 2007 incident, and remembered saying to mother in the heat of anger that he wanted to kill stepfather. When appellant said that, he was holding a knife to his throat. The knife’s blade was seven or eight inches long. Appellant told mother that he wanted to hurt himself, told her to call 911, and told her that if she did not call 911 that he would hurt himself. Appellant did not threaten anyone other than stepfather and appellant, and would not have hurt anyone else. Appellant was relieved when the police arrived. He

¹ Minor No. 2 and minor No. 3 are minors other than appellant.

did not want anything to happen. The prosecutor asked appellant if he was afraid that he might hurt himself. Appellant replied, “Yeah, and my family.”

Appellant wrote in his statement to police “call the cop or someone is going to die, not me, you, [minor No. 2], or [minor No. 3.]” Appellant “made that up” because he wanted to go to juvenile hall where he would have more freedom, instead of going to a place like a psychiatric hospital where suicidal people were taken and might be placed in a straitjacket. Appellant had been in a straitjacket before. Appellant never told the officer that he had been suicidal.

CONTENTION

Appellant claims there was insufficient evidence that stepfather feared for his life or for the lives of those in his household.

DISCUSSION

There Was Sufficient Evidence of the Requisite Fear.

The juvenile court sustained a petition alleging that appellant committed the offense of criminal threats in violation of Penal Code section 422, by threatening stepfather.

Appellant disputes the sufficiency of the evidence that appellant’s threat to kill stepfather, which mother conveyed to stepfather, caused stepfather to harbor the requisite fear. We reject the claim.

In *People v. Toledo* (2001) 26 Cal.4th 221 (*Toledo*), our Supreme Court stated, in relevant part, “In order to prove a violation of [Penal Code] section 422, the prosecution must establish all of the following: (1) that the defendant ‘willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,’ (2) that the defendant made the threat ‘with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,’ (3) that the threat -- which may be ‘made verbally, in writing, or by means of an electronic communication device’ -- was ‘on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the

threat,’ (4) that the threat actually caused the person threatened ‘to be in sustained *fear for his or her own safety or for his or her immediate family’s safety*,’^[2] and (5) that the threatened person’s fear was ‘reasonabl[e]’ under the circumstances. [Citation.]” (*Id.* at pp. 227-228, italics added.)

In the present case, there is no dispute that appellant, through mother, willfully threatened to commit a crime which would result in death or great bodily injury to stepfather, that appellant made the threat with the specific intent that the statement be taken as a threat, and that the threat was on its face and under the circumstances in which it was made, so unequivocal, unconditional, immediate, and specific as to convey to stepfather a gravity of purpose and an immediate prospect of execution of the threat. Nor does appellant dispute that, if stepfather had the requisite fear, it was reasonable under the circumstances. Appellant argues only that his threat did not cause stepfather to harbor the requisite fear.

Mother testified appellant held a knife, said he wanted her to call stepfather, and said he wanted to “hurt” stepfather. Only after prodding by the prosecutor did mother admit she *thought* appellant said “kill.”

Mother testified that, after police arrived, she called stepfather and told him to call 911 because appellant needed help. However, she did not explain why she needed to have stepfather call 911 again if the police were already at her home, why she could not have called 911 again herself, or what additional help she had expected to receive if police were already at her home. Moreover, only after prodding by the prosecutor did mother admit that she told stepfather that appellant had threatened to kill stepfather. Even then, she minimized the threat by further testifying that she told stepfather that

² Appellant mischaracterizes the fourth element as “the victim was actually placed in fear for his or her own life or for the lives of his or her family[.]” We note fear is “sustained” for purposes of the section when it is for a period of time that extends beyond what is momentary, fleeting, or transitory. (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.)

appellant wanted to “hurt” him. Stepfather testified that mother asked him to come home, but he did not testify that mother asked him to call 911.

Mother later testified she called police because appellant said he was going to hurt himself but, only after prodding by the prosecutor did she admit she called police because appellant said he was going to hurt stepfather. Mother acknowledged she had been very afraid, and the trial court reasonably could have concluded that she conveyed her fear to stepfather when she spoke to him by phone.

Mother testified that appellant said if she did not call 911, he would hurt himself. However, neither mother nor appellant explained why appellant needed assistance from 911 not to hurt himself.

The testimony of mother, stepfather, and Olsey suggested stepfather was very concerned about the threat and went home without delay.

Mother effectively denied that she had told Olsey that appellant said he was going to hurt someone. However, appellant admitted in his written statement to Olsey that he told mother to call the police or someone was going to die.

As for stepfather’s testimony, he acknowledged appellant had threatened to kill him. However, stepfather testified the threat caused him to feel nothing. Stepfather testified he did not remember if mother told him that appellant had a knife. The trial court reasonably might have expected stepfather to remember if mother had said this. Moreover, if stepfather initially had testified that mother told stepfather that appellant had a knife, this would have provided a reason for stepfather to be afraid (which, according to stepfather, he was not). It was only when being cross-examined that stepfather acknowledged mother said appellant was holding a knife (to his neck).

Stepfather denied he told the officers that he thought appellant could carry out his threats. Olsey, however, testified stepfather believed appellant was able with a knife in his pocket to harm stepfather or his family. The trial court reasonably could have disbelieved stepfather on this issue.

Stepfather knew (1) appellant had threatened to kill him, (2) appellant had threatened to kill himself with a knife, (3) appellant was very upset and out of control,

and (4) there were children in the house. However, stepfather testified he was not afraid for himself or his family. The trial court reasonably could have disbelieved him on this issue.

Olsey testified that when he went to the scene, mother told him that she had called the police because her husband had been threatened and appellant had threatened to kill someone. Olsey testified mother never said anything about appellant wanting to harm himself or about appellant saying he wanted to kill himself.

Appellant's written statement to Olsey not only did not refer to appellant hurting or killing himself, but suggested he in fact was not going to kill himself. His statement said he told mother that someone was going to die, "not me."

After police were putting appellant in the patrol car, stepfather asked Olsey if he could speak with appellant. Later, Olsey explained to stepfather that one of the elements of the crime was that he had to be in fear for his safety or for the safety of his family, and he indicated he was in such fear. That is, according to Olsey, even after appellant was in custody and being put in the patrol car, stepfather indicated he was in fear for his safety or that of his family.³

During his defense testimony, stepfather testified mother did not indicate that she was afraid of appellant or that she felt threatened by him. However, Olsey testified mother told him that she had called the police because appellant said he was going to kill "somebody," she appeared to be pretty shook up and was probably just short of being hysterical, and she appeared to be afraid. The trial court reasonably could have concluded from Olsey's testimony that mother conveyed to stepfather a fear of appellant and that she felt threatened by him.

³ We realize appellant arguably made two threats to stepfather (one through mother by phone, and one through police at the scene) but the trial court reasonably could have concluded that each independently caused stepfather to fear and convey that fear to Olsey after he explained the elements of the crime as discussed above.

Appellant, during his testimony, denied he would have hurt anyone other than stepfather and himself. However, he also testified he was relieved when police arrived, and he testified he was afraid that he might hurt himself and his family.

Appellant's written statement to police indicated he told mother to call the police or someone would die. The trial court reasonably could have believed appellant's testimony that he "made that up" in order to be taken to juvenile hall instead of a psychiatric hospital was fabricated. Appellant acknowledged during his testimony that he never told Olsey that appellant had been suicidal.

When a defendant challenges on appeal the sufficiency of the evidence, "[o]ur power as an appellate court begins and ends with the determination whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, to support the judgment. [Citation.]" (*People v. Hernandez* (1990) 219 Cal.App.3d 1177, 1181-1182.)

In light of all the evidence in this case, we believe the trial court reasonably could have discredited as biased some of stepfather's (and mother's) testimony in this case. For example, the trial court reasonably could have discredited as biased, if not fabricated, the testimony of stepfather (as well as that of mother and appellant) insofar as it provided evidence that appellant had threatened to hurt or kill himself. More pertinent to the issue at hand, we believe the trial court (1) reasonably could have discredited as biased stepfather's testimony that appellant's threat conveyed through mother did not cause stepfather to fear, and (2) reasonably could have credited the evidence, circumstantial and otherwise, that the threat caused stepfather to fear.

We conclude there was sufficient evidence to convince a rational trier of fact, beyond a reasonable doubt, that appellant committed a violation of Penal Code section 422, including sufficient evidence that "the threat actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety' " for purposes of Penal Code section 422. (*Toledo, supra*, 26 Cal.4th at p. 228; *In re Dennis B., supra*, 18 Cal.3d at p. 697.)

DISPOSITION

The order of wardship is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.